

ESTTA Tracking number: **ESTTA308782**

Filing date: **09/29/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Charles Komar & Sons, Inc.		
Entity	Corporation	Citizenship	New York
Address	16 East 34th Street New York, NY 10016 UNITED STATES		
Attorney information	John M. Rannells Baker and Rannells PA 575 Route 28 Suite 102 Raritan, NJ 08869 UNITED STATES jmr@br-tmlaw.com, k.hnasko@br-tmlaw.com, s.baker@br-tmlaw.com Phone:908-722-5640		

### Applicant Information

Application No	77641400	Publication date	09/22/2009
Opposition Filing Date	09/29/2009	Opposition Period Ends	10/22/2009
Applicant	Earth Angel Creations, Inc 848 N. Rainbow Blvd. #784 Las Vegas, NV 891071103 UNITED STATES		

### Goods/Services Affected by Opposition

Class 025. First Use: 2008/12/19 First Use In Commerce: 2008/12/19

All goods and services in the class are opposed, namely: Babies' and children's clothing, namely, baby bibs not of paper; baby bodysuits; baby bottoms; baby bunting; baby doll pajamas; baby tops; caps; children's and infants' cloth bibs; children's cloth eating bibs; cloth bibs; cloth diapers; clothing, namely, hand-warmers; infant and toddler one piece clothing; and shoulder wraps

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	1679890	Application Date	04/13/1990
Registration Date	03/17/1992	Foreign Priority Date	NONE
Word Mark	EARTH ANGELS		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1990/05/00 First Use In Commerce: 1990/05/00 women's clothing; namely, sleepwear, loungewear, sweaters, lingerie, jumpsuits, pants, pajamas, rompers, robes, nightshirts, dresses, skirts and tops

Attachments	earth angel opp.pdf ( 4 pages )(161779 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/john rannells/
Name	John M. Rannells
Date	09/29/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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-----X	)	
Charles Komar & Sons, Inc.	)	<b>Opp. No.</b> _____
	)	
Opposer	)	<b>Mark: EARTH ANGEL CREATIONS</b>
	)	
v.	)	<b>Ser. No. 77641400</b>
	)	
Earth Angel Creations, Inc.	)	
	)	
Applicant.	)	
-----X	)	

**NOTICE OF OPPOSITION  
PURSUANT TO 15 U.S.C SECTION 1063**

In the matter of trademark application Serial No. 77641400 by Applicant, Earth Angel Creations, Inc. ("Applicant"), for EARTH ANGEL CREATIONS as a trademark for "Babies' and children's clothing, namely, baby bibs not of paper; baby bodysuits; baby bottoms; baby bunting; baby doll pajamas; baby tops; caps; children's and infants' cloth bibs; children's cloth eating bibs; cloth bibs; cloth diapers; clothing, namely, hand-warmers; infant and toddler one piece clothing; and shoulder wraps" ("Applicant's Goods"), published for opposition in the Official Gazette of September 22, 2009, at TM 752, Charles Komar & Sons, Inc., a corporation organized and existing under the laws of the State of New York and located and doing business at 16 East 34<sup>th</sup> Street, New York, New York 10016, believes that it will be damaged by the registration of the alleged mark shown in Application Serial No. 77641400 and opposes the application under the provisions of 15 U.S.C. §1063 (Trademark Act of 1946, Section 13). As grounds of opposition, it is alleged that:

1. Opposer is the owner of the marks EARTH ANGELS and variations thereof (collectively, "Opposer's Mark") as a trademark, trade name, and as a service mark as applied to a wide range of clothing products and related goods and services directed to wholesale and retail consumers. Opposer is the owner of, *inter alia*, the following U.S. trademark registration which is in good order, incontestable, and in the name of the Opposer: Reg. No. 1679890 for the mark EARTH ANGELS for "women's clothing; namely, sleepwear, loungewear, sweaters, lingerie, jumpsuits, pants, pajamas, rompers, robes, nightshirts, dresses, skirts and tops".

2. Opposer is now and for many years has been trading as and known by the Opposer's EARTH ANGELS mark, identifying Opposer as the source of a wide variety of clothing goods, the same being substantially similar to and generally related to Applicant's Goods identified in the EARTH ANGEL CREATIONS Application in issue.

3. Opposer is now and has been, for many years prior to any date which may be claimed by Applicant, engaged in the use of Opposer's EARTH ANGELS mark on and for a wide variety of clothing goods, the same being substantially similar to and generally related to Applicant's Goods identified in the EARTH ANGEL CREATIONS Application in issue.

4. Since long prior to any date which may be claimed by Applicant, Opposer on its own behalf has been, and is now engaged in the sale of the goods identified in paragraph 1 hereinabove under the Opposer's EARTH ANGELS mark in interstate commerce.

5. The use by Opposer of the Opposer's Mark for the Opposer's goods and services alleged herein, is long prior to any date which may be lawfully claimed by Applicant, and Opposer has priority.

6. The Opposer's Mark and Applicant's EARTH ANGEL CREATIONS mark are confusingly similar when applied to the goods of the parties.

7. The goods of Applicant and Opposer are substantially similar and related in part and generally related in part, and Applicant's use of EARTH ANGEL CREATIONS in connection with its goods is without the consent or permission of Opposer.

8. Since Opposer owns the Opposer's Mark by virtue of prior use, mistake or deception as to the source of origin of the goods will arise and will injure and damage the Opposer and its goodwill.

9. The registration of the mark EARTH ANGEL CREATIONS to Applicant will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Applicant's goods are made by, licensed by, controlled by, sponsored by, or in some way connected, related or associated with Opposer, all to Opposer's irreparable damage.

10. Opposer believes that it is and will be damaged by registration of the mark applied for by Applicant.

WHEREFORE, Opposer prays that the application for registration of EARTH ANGEL CREATIONS, Serial No. 77641400, filed on December 30, 2008, be denied and that this Opposition be sustained.

Respectfully submitted for Opposer

CHARLES KOMAR & SONS, INC.

By:

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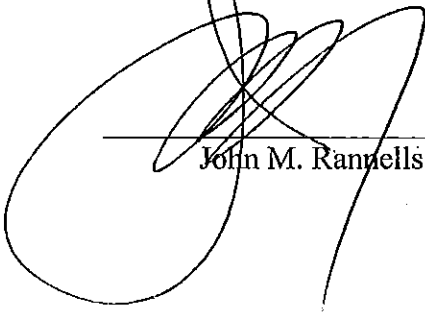
Dated: September 29, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION in re Charles Komar & Sons, Inc. v. Earth Angel Creations, Inc. (re: Ser. No. 77641400) was forwarded by first class postage pre-paid mail by depositing the same with the U.S. Postal Service on this 29<sup>th</sup> day of September, 2009 to the applicant, at the applicant's address of record at the following address:

Earth Angels Creations, Inc.  
848 N. Rainbow Blvd. #784  
Las Vegas, Nevada 89107

DATED: September 29, 2009



John M. Rannells